

CO-OPERATION ACT 1981

GENERAL GUIDE FOR CO-OPERATIVES
IN VICTORIA

October 1986

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1. INTRODUCTION

Co-operatives have been formed by people from many walks of life who set out to improve their own or communities' situation, to reach goals which could not be achieved by their separate, individual efforts.

A Co-operative can be defined as:

"a group of people who voluntarily come together on a basis of equality, self help and mutual aid, with the purpose of jointly promoting their socio-economic well being in a democratic manner, while adhering to the principles of co-operation."

Modern co-operation began in England as a response by common people to the economic anarchy which prevailed at the outset of the industrial revolution. The first financially successful co-operative in the world was begun in 1844 by a group of workers in Rochdale, an industrial town in the heart of England's manufacturing area.

Today, co-operatives are found on every continent throughout the world and operate in virtually every sector of the economy including food, finance, agriculture, housing, manufacturing and insurance.

Co-operatives differ from other forms of organisation in that they are part of a movement with a distinct philosophy, based on the six principles of co-operation. What distinguishes a co-operative from other forms of private or public organisations is its mutuality, its democratic structure and character, and that capital in a co-operative serves the activity rather than individual benefit.

The prime objective of a co-operative is to provide for the common needs of its members, either through the provision of services, products or other activities. Co-operative mutual aid is based on members combining, and together, defining and meeting their shared interests.

In a co-operative, decisions are made in a democratic manner. Co-operative members have one vote only, irrespective of number of shares held or the capital contributed by members. Unlike a company or an association, a co-operative cannot distort its democratic structure. Legislation (in Victoria the Co-operation Act 1981) ensures that each member of a co-operative retains equal voting rights.

The share capital and funds of a co-operative are used primarily to provide for the collective benefit of all members rather than in providing for a return on capital contributed by members. Profits are distributed to members on the basis of work done or transactions made with the co-operative, not on the basis of share capital held. Co-operatives have reserve provisions to ensure capital is retained so it can continue to serve its prime role of providing benefits to members.

Any group of persons who wish to form a co-operative and become a legal entity must register under the Co-operation Act 1981.

The Co-operation Act 1981 is an act of Parliament and sets out the legal requirements for the registration, operation and management of a co-operative, and the responsibilities a co-operative has to its members and the general public.

This guide has been compiled and issued to provide guidance on the formation, operation and management of a co-operative registered under the Co-operation Act 1981. This guide should not be relied upon as a substitute for detailed consideration of the Act and its associated Regulations. Groups wishing to form a co-operative should familiarise themselves with the Act and the Regulations prior to seeking registration as a co-operative. If the group has any specific queries relating to the formation and management of a co-operative all enquiries should be directed to the Registry of Co-operative Societies.

The Registry of Co-operative Societies is situated at:

9th Floor,
471 Little Bourke Street,
MELBOURNE, VIC, 3000.

Telephone:- (03) 603 4646

2. CO-OPERATIVE PRINCIPLES

Co-operatives are distinguished from other forms of organisation by their adoption of the six principles of co-operation. The following are the principles of co-operation as interpreted by the Ministerial Advisory Committee on Co-operation, Victoria:

1. Membership of a co-operative should be voluntary and available without social, political, racial or religious restriction, to all persons who can make use of its services and are willing to accept the responsibilities of membership as set out in the rules.
2. Co-operatives are democratic organisations which embody and encourage membership control. The basis for this is equal rights of voting - one member one vote. Democracy in co-operatives must be ongoing and participative. Their affairs should be administered in a manner agreed by the members and accountable to them.
3. Share capital's primary objective is to serve a co-operative's activities, rather than provide a basis for individual return to members. Shareholders should receive a limited return on their capital, if any.
4. The economic results from the operations of a co-operative belong to the members of that co-operative and should be distributed in a manner as would avoid one member gaining at the expense of others. This may be done by decisions of the members as follows:
 - (a) by provision for the development of the business of the co-operative;
 - (b) by provision of common services; or,
 - (c) by distribution among the members in proportion to their transactions with the co-operative. Transactions are the member's dealings with the co-operative.
5. All co-operatives should make provision for the education of their members, officers, and employees and of the general public, in the co-operative principles and techniques both economic and democratic.
6. Co-operation is an alternative to competition. There should be mutual support between co-operatives and co-operative sectors and communities at the local, national and international levels; this is the foundation of the co-operative movement and should be demonstrated on a practical level.

3. CO-OPERATIVES AS A CORPORATE BODY

3.1 WHAT IS A REGISTERED CO-OPERATIVE?

A co-operative registered under the Co-operation Act 1981 is a corporate body which has a separate legal existence; it is recognised in law as having an existence separate and apart from the individuals who are its members.

A registered co-operative:

- (a) has perpetual succession, i.e. it continues to be a co-operative until action is taken to dissolve it;
- (b) has the power to acquire or hold property;
- (c) is capable of suing or being sued;
- (d) can enter into contracts; and
- (e) has limited liability.

An important feature of a registered co-operative is that the liability of individual members is limited, i.e. no member or officer of a co-operative shall be liable to contribute towards the payments of the debts and liabilities, or the costs, charges and expenses of the winding up of the co-operative. In a co-operative members would only be liable (be required to pay) for an amount, if any, unpaid on their shares together with outstanding charges set under the co-operative's rules.

It should be noted that the Board of Directors of a co-operative has a number of responsibilities under the Co-operation Act and a failure to fulfill these responsibilities could make all directors liable to penalties under the Act.

A co-operative also has the power to invest and deal with money not immediately required by the co-operative, subject to the provisions of the Act, raise or borrow money as it thinks fit, and secure the repayments of moneys so raised or borrowed or the payment of a debt or liability by giving mortgages, charges or securities upon or over all or any of the property of the co-operative.

A co-operative's approval of legal documents is indicated by its seal. A seal is basically a rubber stamp with the co-operative's full name within two concentric circles.

3.2 TYPES OF CO-OPERATIVES

The Co-operation Act 1981 provides for the registration of different types of co-operatives. Therefore, groups intending to form a co-operative need to decide which type of co-operative matches their objectives. As a guide the following descriptions indicate the objectives and powers for the various types of co-operative and the kinds of co-operatives that are normally registered by type:

(a) Producers Co-operative

A Producers Co-operative usually undertakes activities associated with agriculture. A Producers Co-operative can act as:

- (i) a marketing organisation for its members in the sale of agricultural products;
- (ii) a purchasing organisation for its members of such goods as agricultural products, implements and machinery and other farming requisites;
- (iii) a service organisation for its members in the provision of advice, contracting services, insurance, the hire of implements and machinery and other farming related services; and
- (iv) a manufacturer of farming requisites for sale to its members and other persons.

If authorised by its rules, a Producers Co-operative may raise money on loan, receive money on deposit, acquire shares in other co-operatives registered under the Act, or make advances to its members or other persons against products delivered or to be delivered to the co-operative. Also a Producers Co-operative may, if authorised by its rules, make an advance out of its reserve fund to a member upon the security of his or her shares in the co-operative, provided the amount advanced shall not exceed one half of the amount paid up on the shares.

(b) Trading Co-operative

A Trading Co-operative may carry out any retail or wholesale business, trade, manufacture or industry as specified in its rules. It may also buy and sell agricultural products and livestock, but only a Producers Co-operative has the power to sell agricultural products as an agent for its members and other persons.

If authorised by its rules a Trading Co-operative has the power to raise money on loan, receive money on deposit, acquire shares in another co-operative or make advances to members or other persons against goods or commodities agreed to be sold to the co-operative. A Trading Co-operative may also, if authorised by its rules, make an advance out of its reserve fund to a member upon the security of his or her shares in the co-operative, provided the amount advanced does not exceed one-half of the amount paid up on the shares.

The kinds of co-operatives registered as a Trading Co-operative in Victoria include: food and grocers co-operatives; worker co-operatives; taxi co-operatives, arts co-operatives; publishing and printing

co-operatives; and fisherman's co-operatives to name a few. Any activity, excluding those relating to a Producers Co-operative, that provides services to members and trades in an industry can be undertaken by a Trading Co-operative.

(c) **Community Advancement Co-operative**

A Community Advancement Co-operative may be formed for the object of providing community services or benefits as specified in its rules. Many Community Advancement Co-operatives are non profit organisations, that is members do not receive any financial reward for participating in the co-operative.

In carrying out its objects a Community Advancement Co-operative may, if authorised by its rules, raise money on loan and acquire shares in another co-operative, but is not permitted to receive money on deposit.

Common activities undertaken by Community Advancement Co-operatives include: child care; housing; building and development projects for education or recreation purposes; the supply of water; F.M. radio; promoting tourism; and health services to name a few. Any activity relating to providing a community service or benefit can be undertaken by a Community Advancement Co-operative.

(d) **Community Settlement Co-operative**

A Community Settlement Co-operative is formed for the objective of settling people in rural areas by acquiring land and developing it for settlement. The Co-operative may make share farming agreements with its members, arrange loans for its members for the purpose of purchasing land in rural areas, making improvements, carrying out agricultural activities, and arrange insurance on behalf of its members.

A Community Settlement Co-operative may raise money on loan, receive money on deposit and acquire shares in any other co-operative.

4. HOW TO FORM A REGISTERED CO-OPERATIVE

4.1 PROCEDURE FOR REGISTERING A CO-OPERATIVE

There are five practical steps to be taken when registering a co-operative:

- (a) First there needs to be at least seven persons over the age of 18 years who wish to form a co-operative. While the Act permits a person over 15 years to be a member a person between the ages of 15 to 18 years are not allowed to be one of the persons who form a co-operative;
- (b) Secondly, and as a preliminary to the actual formalities required by the Act, it is necessary to decide upon a name for the co-operative. An alternative name should also be chosen since the Act does not permit a co-operative to have a name identical with another co-operative that is registered under the Act or nearly resembling that name or the name of any other organisation that is registered under any other Act.
- (c) Thirdly it is necessary to compile and have two statements approved by the Registry of Co-operative Societies, these being the Rules and a Formation Statement.
- (d) Fourthly, after the approval by the Registry of the Rules and Formation Statement, a Formation Meeting can be held.
- (e) Finally, after the Formation Meeting, formation documents comprising the Rules, Formation Statement and Registration Documents are lodged with the Registry for the formal registration of the co-operative. The formation documents must be lodged with the Registry within two months after the date of the Formation Meeting.

4.2 THE RULES

The rules are in effect the constitution of a co-operative. The rules provide a framework in which a co-operative operates and sets out: the objectives and powers of the co-operative; membership details; the rights and responsibilities of members; the composition, power and duties of the Board of Directors; meeting procedures and other matters.

It is important to note that the rules are binding on the co-operative and its members, that is, the Board and members are required to adhere to the rules in all matters relating to the co-operative's activities.

Draft rules for the different types of co-operatives are available from the Registry of Co-operative Societies upon request.

Groups wishing to vary the draft rules to suit their particular activity should check with the Registry to ensure that the proposed changes comply with the Co-operation Act.

4.3 THE FORMATION STATEMENT

The Act requires that a statement of the co-operative's future plans is to be prepared and presented at the formation meeting. This statement, called the Formation statement, sets out:-

- (a) the objects of the co-operative;
- (b) the factors which will ensure that it will be co-operative in character and operation;
- (c) the reasons why, when registered, the co-operative will be able to successfully achieve its objects. The co-operative will also be required to show that it will be financially viable by the presentation of detailed budgets for the first two financial years of operation.

4.4 FORMATION MEETING

The Act requires that prior to a co-operative being registered a formation meeting must be held at which there needs to be seven or more persons present. No particular form of notice has to be given to those people attending the formation meeting.

At this meeting, after the election of a chairperson and secretary of the meeting, consideration is given to the rules and formation statement. If the rules are approved, with or without amendment, by seven or more persons qualified to be members, eligible persons who wish to become members of the co-operative apply for shares in the co-operative. This must be done on the form prescribed by the Act. However, the Act prohibits any person taking any money in consideration of the allotment of shares prior to the registration of a co-operative. Therefore, share monies can either be paid by members after registration or, if paid prior to registration, payments should be deposited in a trust account established for that purpose and share monies transferred to the co-operative after registration.

Once all eligible members sign the membership application they then proceed to elect directors in accordance with the approved rules. The chairperson and secretary of the meeting must then sign the rules, formation statement, and all the registration documents outlined in 4.5 below.

Finally the new members pass a motion for registration as a co-operative.

Within two months of the formation meeting the rules in duplicate, formation statement and the following registration documents are to be forwarded to the Registrar of Co-operative Societies for formal registration of the co-operative.

4.5 THE REGISTRATION DOCUMENTS

In addition to the rules and formation statement the following documents are to be completed at the formation meeting:

- (a) Application for registration of the co-operative (Form 8);
- (b) A statutory declaration by the chairperson and secretary of the formation meeting relating to the formation of the co-operative (Form 9).
- (c) A list containing the full details of each director (Form 3), together with a statement of competency;
- (d) A list of the applicants for membership (Form 10);
- (e) Application to register the office of the co-operative (in duplicate) (Form 20).

The above forms will be forwarded prior to the formation meeting.

In addition to the above documents a fee of \$50.00 is payable to the Registrar of Co-operative Societies before a co-operative can be registered. This fee should be forwarded to the Registry with the formation documents.

4.6 REGISTRATION

After consideration of the formation documents, the Registrar will make a decision whether or not to register the co-operative. The Registrar may, however, require further information prior to the registration of the co-operative.

Upon registration of the co-operative, a certificate of incorporation will be issued and forwarded to the secretary of the co-operative, together with a copy of the rules and the form relating to the registered office, as certified by the Registrar.

4.7 ASSISTANCE

If the group wishes to form a co-operative contact should be made with the Registry of Co-operative Societies to forward a draft set of rules and a draft formation statement.

Before proceeding with the formation of a co-operative it is recommended that representatives of the group make an appointment with officers of the Registry in regard to drafting an appropriate set of rules and a formation statement which reflects the needs of the proposed co-operative. This process ensures that all registration requirements of the Co-operation Act will be met. Once all the requirements have been satisfactorily met the Registry will forward all the necessary documents required to the group and the formation meeting can then be held.

5. OPERATION OF A CO-OPERATIVE

5.1 THE CO-OPERATION ACT 1981 AND THE REGULATIONS

The operation of a co-operative is governed by the Co-operation Act 1981 and the Co-operative Societies (General) Regulations 1982. A summary of a number of requirements of the Act and the Regulations in respect to the management and operation of a co-operative are outlined below. The Act also stipulates that a co-operative must keep a copy of the Act and the Regulations at its registered office at all times. Copies of the Act and the Regulations can be obtained from the Victorian Government Bookshop, St Andrews Place, Melbourne.

5.2 MEMBERSHIP

Any person over the age of 15 years may be a member of the co-operative. However, the co-operative's rules may limit membership to persons from a specified neighbourhood, common bond or philosophy.

Also any incorporated body which is substantially co-operative in nature may also be admitted to membership, e.g. other co-operatives etc.

Individuals or incorporated bodies who wish to be a member apply to the co-operative on the form prescribed by the Act. In order to be a member, the Board of Directors usually determines whether or not the applicant qualifies for membership. The Board can reject a membership application. If the Board approves a membership application the new member is then required to purchase the minimum number of shares as outlined in the co-operative's rules.

However, if a co-operative prefers an alternative arrangement for the approval of membership the draft rules will need to be amended accordingly.

There may be instances where a member has not fulfilled their responsibilities to the co-operative. Under certain circumstances, which are outlined in the co-operative's rules, a co-operative has the power to expel a member. However the expulsion of a member must be approved at a general meeting of the co-operative and that member has a right to be heard at the meeting prior to a decision being made to expel.

5.3 MANAGEMENT

Under the Co-operation Act a Board of Directors is responsible for the management and control of a co-operative. To encourage greater participation of members in the operation of the co-operative the rules can provide that policy and other decisions be ratified by members at a general meeting.

In a co-operative members elect, from amongst themselves, the Board of Directors. Directors are elected for a period determined by the rules (normally two years) at the co-operative's Annual General Meeting. If a director resigns or is removed by members the rules provide the procedure for filling the 'casual vacancy'. The Registrar has to be notified of any change in the Board of Directors within fourteen days of the change.

Between 3 and 7 members can comprise a Board of Directors. The rules have to stipulate the number of directors a co-operative wants to have.

The Board is legally responsible for ensuring that the co-operative complies with the requirements of the Co-operation Act 1981 and other relevant laws. It is in the interest of all members, whether they are directors or not, to ensure that all legal requirements are met.

Any contravention of, or failure to comply with, the requirements of the Co-operation Act 1981 renders a co-operative and the Board and officers, liable to penalties under the Act.

5.4 MEMBERS' RIGHTS AND RESPONSIBILITIES

The purchase of shares in a co-operative entitles a member to a number of rights under the Act, including: to vote and participate in meetings of the co-operative, to be elected onto the Board, and to have access to certain information regarding the affairs of the co-operative in accordance with the Act.

Members also have a number of responsibilities to the co-operative: to elect competent directors, to pay charges, fees or fines when required, and other matters that may be included in the rules of a co-operative.

The rules of a co-operative can include additional rights and responsibilities of members.

5.5 VOTING

Co-operatives are democratic organisations - every member is entitled to one vote only, irrespective of number of shares held. No variation whatsoever is permissible. Voting by proxy is not allowed.

However, the Act specifies that persons aged between 15 and 18 years of age who are members are not entitled to vote.

In regard to proceedings at meetings the rules may allow for the rotation of chairpersons, and decision-making either by a simple majority, or by consensus, except for special resolutions considered at either Annual General Meetings or Special General Meetings where 3/4's of the members present need to agree to a proposal for it to be carried.

5.6 SHARES

The capital of a co-operative is raised by the issue of shares. Shares in a co-operative are all of one class, ranking equally on the winding up of the co-operative. Shares cannot be sold on the stock exchange or in any public manner whatsoever.

The rules of a co-operative can fix the minimum and maximum number of shares that any one member can hold, however no one member can hold more than 20% of the shares in a co-operative.

Each share normally has a nominal value of \$1.00. No share can be issued at a discount or at a premium, nor can a share be allotted to a member unless at least one-tenth of the nominal value of each share has been paid. A person must subscribe for the minimum of shares as specified in the rules prior to being admitted as a member of a co-operative. A share may not be sold or transferred without the consent of the Board.

During the life of a co-operative the value of the share remains the same. Regardless of the length of time a member holds a share and regardless of the profitability of the co-operative, each share's value remains \$1.00.

Where a member resigns or ceases to be a member in accordance with the Act and the rules their shares are either transferred to a new member or cancelled. The co-operative may repay to a member with his or her consent the whole or any part of the amount paid up on any share held by him or her at any time when the share monies are not required for the purposes of the co-operative. Under the Act the Board is under no obligation to repay share capital.

It is important to note that a co-operative cannot, without the consent of the Registrar, make any such repayment of share capital if the co-operative has received from any person who is not a member any money on loan or deposit which is not secured by mortgage and is still unpaid.

A co-operative may cancel or sell and re-issue any share forfeited to the co-operative in accordance with the Act but shall not purchase any share of a member in the co-operative.

5.7 DISTRIBUTION OF SURPLUS

For a co-operative to survive it needs to at least generate sufficient income to meet its expenses. In some cases, particularly in producer and trading co-operatives, a surplus (profit) may be generated as a result of a co-operative's activities during a financial year.

The Co-operation Act 1981 and the rules provide guidelines on how surplus in a co-operative is distributed. After providing for depreciation in value of the co-operative's property, income tax and contingent liability for loss, 5% of the surplus must be applied to a reserve fund. The balance can be: reinvested in the co-operative; distributed to members in the form of dividends, bonuses or rebates; or distributed for any charitable purpose or community benefit (not exceeding 10% of surplus) according to the rules of a co-operative.

If a co-operative is to undertake a commercial activity consideration will need to be given to what proportion of the surplus should be retained in the co-operative. This is important as many businesses fail by being under capitalised. If a co-operative is going to undertake a commercial activity some thought should be given to balancing the long term development interests of the co-operative with the short term interests of members wanting financial rewards. The rules can reflect this balance, if considered necessary.

However some groups may wish that their co-operative be a non profit organisation, that is, members do not receive any financial reward for their participation in the co-operative. In regard to surplus, this can be done by amending the draft rules so that no surplus is distributed to members.

5.8 INSURANCE

A co-operative is required to take out all appropriate insurance affecting its operation, including fidelity guarantee insurance on the persons having the receipt or charge of any money of the co-operative.

5.9 INVESTMENTS

The Act places a restriction on where a co-operative may invest its surplus funds. Authorised trustee investments, banks, building societies and other authorised societies are acceptable forms of investment. However a co-operative cannot invest any portion of its funds in any other co-operative, including credit co-operatives (credit unions) unless and until the co-operative has first obtained approval in writing from the Registrar for the investment.

Subject to the Act a co-operative may also invest any of its funds in the purchase of shares in any company within the meaning of the Companies (Victoria) Code where the company has agreed in writing to render special services to the co-operative in furthering the co-operative's objects. However a co-operative cannot at any time hold shares in such companies of a nominal value which exceeds one third of the paid up capital of the co-operative. Moreover a co-operative cannot purchase any such shares unless the purchase is authorised by a special resolution of members of the co-operative.

5.10 RECORDS

There are a number of records that are required to be kept by a co-operative. These include Registers, Accounting Records, Minutes of Meetings and Share Applications. Details of the records to be kept are included in a circular issued after the registration of the co-operative. The Regulations provide some details on the form the records need to take.

5.11 AUDIT

The Act requires the accounts of a co-operative to be audited at least once a year, usually after the end of the co-operative's financial year. The objective of an audit is to examine the records of a co-operative as may be necessary to enable the auditor to form an honest and independent opinion as to whether (or not) the accounts of the co-operative gives a true and fair view of the state of affairs of the co-operative at the end of its financial year, and whether the accounting and other records (including registers) are properly maintained. A registered company auditor has to be appointed within one month after registration.

5.12 REGISTERED OFFICE

The registered office of a co-operative is required to be stated in the rules, and is the place where all correspondence from the Registrar of Co-operative Societies is forwarded. It is common for all the books of a co-operative including the required registers to be kept at the registered office. In the event of a co-operative changing its registered office the Registrar has to be notified within fourteen days of such a change on the required form (Form 20).

5.13 DISPLAY OF A CO-OPERATIVE'S NAME

A co-operative is required to have its name legibly printed on a sign outside its registered office and any other place of business. The co-operative's name is to be also printed clearly on its seal, notices, advertisements, publications, bank accounts, cheques, invoices, receipts and other documents required in the business of the co-operative.

5.14 FEES

The Regulations outline a number of fees associated with the formation and operation of a co-operative. Circumstances that require the payment of fees to the Registrar include: the registration of a co-operative; the lodgement of contracts and agreements; late lodgement of annual returns; the registration of special resolutions and the registration of a change of address of the co-operative's registered office. Other fees may apply from time to time.

For further information on the amount required to be paid on the matters referred to above see Regulation 79 of the Regulations.

5.15 DOCUMENTS TO BE LODGED WITH THE REGISTRAR

The Act and the Regulations outline a number of circumstances where documents are required to be lodged with the Registrar of Co-operative Societies. A summary of these circumstances are outlined in a circular issued after the registration of the co-operative.

5.16 OFFENCES AND PENALTIES

Any contravention of, or failure to comply with, the requirements of the Act renders a co-operative, the directors and officers responsible liable to penalties under the Act.

5.17 WINDING UP OF CO-OPERATIVE

As mentioned previously a co-operative remains a corporate body until action is taken to dissolve it. A co-operative can be dissolved or wound up in the following circumstances:

- (a) upon an order of a Court;
- (b) upon a certificate of the Registrar of Co-operative Societies;
- (c) upon a decision by members of the co-operative.

Members can only wind-up a co-operative if three-quarters of those members present at a general meeting pass a special resolution to dissolve it.

There may be instances where, after paying all debts including share capital, there are surplus funds available after winding up. Subject to the rules the surplus funds can be distributed either to members or to another organisation. In non profit co-operatives it is normal to prohibit the distribution of surplus funds to members.

6. REGISTRAR

The Co-operation Act provides for a Registrar of Co-operative Societies to administer the provisions of the Act. The Registrar has wide functions under the Act designed to assist co-operatives and to protect the interests of members and other persons. Apart from functions incidental to matters referred to above, the Registrar can undertake inspections, inquiries and investigations into a co-operative's affairs, to order the production of books and documents held by a co-operative and to call special meetings of members in certain circumstances.

The Registrar is supported by an administrative unit called the Registry of Co-operative Societies. The Registry is staffed by persons skilled in the operation of co-operatives. Any queries relating to issues raised by this guide should be directed to the Registry.